

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 19, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2625

Introduced by Assembly Member Achadjian

February 21, 2014

An act to amend Section 1370 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2625, as amended, Achadjian. Defendants: competence.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for voluntary and involuntary administration of antipsychotic medication. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence, within 90 days of commitment. Existing law requires, that if the report indicates that there is no

substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for conservatorship proceedings.

This bill would require, if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court to order the defendant to be returned to the court no later than 10 days following receipt of the report, and would require the medical director of the state hospital or other treatment facility in which the defendant is confined to promptly notify the defense counsel and the district attorney and to notify the committing county's sheriff that transportation will be needed for the patient.

By imposing additional responsibilities on medical directors at local facilities, this bill would impose a state-mandated local program.

Existing law provides that at the end of 3 years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.

This bill would require the defendant to be returned to the committing court no later than 90 days prior to the expiration of his or her term of commitment.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1370 of the Penal Code is amended to
- 2 read:
- 3 1370. (a) (1) (A) If the defendant is found mentally
- 4 competent, the criminal process shall resume, the trial on the
- 5 offense charged shall proceed, and judgment may be pronounced.

1 (B) If the defendant is found mentally incompetent, the trial or
2 judgment shall be suspended until the person becomes mentally
3 competent.

4 (i) In the meantime, the court shall order that the mentally
5 incompetent defendant be delivered by the sheriff to a state hospital
6 for the care and treatment of the mentally disordered, or to any
7 other available public or private treatment facility, including a
8 local county jail treatment facility, approved by the community
9 program director that will promote the defendant's speedy
10 restoration to mental competence, or placed on outpatient status
11 as specified in Section 1600.

12 (ii) However, if the action against the defendant who has been
13 found mentally incompetent is on a complaint charging a felony
14 offense specified in Section 290, the prosecutor shall determine
15 whether the defendant previously has been found mentally
16 incompetent to stand trial pursuant to this chapter on a charge of
17 a Section 290 offense, or whether the defendant is currently the
18 subject of a pending Section 1368 proceeding arising out of a
19 charge of a Section 290 offense. If either determination is made,
20 the prosecutor shall so notify the court and defendant in writing.
21 After this notification, and opportunity for hearing, the court shall
22 order that the defendant be delivered by the sheriff to a state
23 hospital or other secure treatment facility for the care and treatment
24 of the mentally disordered unless the court makes specific findings
25 on the record that an alternative placement would provide more
26 appropriate treatment for the defendant and would not pose a
27 danger to the health and safety of others.

28 (iii) If the action against the defendant who has been found
29 mentally incompetent is on a complaint charging a felony offense
30 specified in Section 290 and the defendant has been denied bail
31 pursuant to subdivision (b) of Section 12 of Article I of the
32 California Constitution because the court has found, based upon
33 clear and convincing evidence, a substantial likelihood that the
34 person's release would result in great bodily harm to others, the
35 court shall order that the defendant be delivered by the sheriff to
36 a state hospital for the care and treatment of the mentally disordered
37 unless the court makes specific findings on the record that an
38 alternative placement would provide more appropriate treatment
39 for the defendant and would not pose a danger to the health and
40 safety of others.

1 (iv) The clerk of the court shall notify the Department of Justice
2 in writing of any finding of mental incompetence with respect to
3 a defendant who is subject to clause (ii) or (iii) for inclusion in his
4 or her state summary criminal history information.

5 (C) Upon the filing of a certificate of restoration to competence,
6 the court shall order that the defendant be returned to court in
7 accordance with Section 1372. The court shall transmit a copy of
8 its order to the community program director or a designee.

9 (D) A defendant charged with a violent felony may not be
10 delivered to a state hospital or treatment facility pursuant to this
11 subdivision unless the state hospital or treatment facility has a
12 secured perimeter or a locked and controlled treatment facility,
13 and the judge determines that the public safety will be protected.

14 (E) For purposes of this paragraph, “violent felony” means an
15 offense specified in subdivision (c) of Section 667.5.

16 (F) A defendant charged with a violent felony may be placed
17 on outpatient status, as specified in Section 1600, only if the court
18 finds that the placement will not pose a danger to the health or
19 safety of others. If the court places a defendant charged with a
20 violent felony on outpatient status, as specified in Section 1600,
21 the court must serve copies of the placement order on defense
22 counsel, the sheriff in the county where the defendant will be
23 placed and the district attorney for the county in which the violent
24 felony charges are pending against the defendant.

25 (2) Prior to making the order directing that the defendant be
26 confined in a state hospital or other treatment facility or placed on
27 outpatient status, the court shall proceed as follows:

28 (A) The court shall order the community program director or a
29 designee to evaluate the defendant and to submit to the court within
30 15 judicial days of the order a written recommendation as to
31 whether the defendant should be required to undergo outpatient
32 treatment, or committed to a state hospital or to any other treatment
33 facility. No person shall be admitted to a state hospital or other
34 treatment facility or placed on outpatient status under this section
35 without having been evaluated by the community program director
36 or a designee. The community program director or designee shall
37 evaluate the appropriate placement for the defendant between a
38 state hospital or a local county jail treatment facility based upon
39 guidelines provided by the State Department of State Hospitals.
40 If a local county jail treatment facility is selected, the State

1 Department of State Hospitals shall provide treatment at the county
2 jail treatment facility and reimburse the county jail treatment
3 facility for the reasonable costs of the bed during the treatment.
4 The six-month limitation in Section 1369.1 shall not apply to
5 individuals deemed incompetent to stand trial who are being treated
6 to restore competency within a county jail treatment facility
7 pursuant to this section.

8 (B) The court shall hear and determine whether the defendant
9 lacks capacity to make decisions regarding the administration of
10 antipsychotic medication, and shall proceed as follows:

11 (i) The court shall hear and determine whether any of the
12 following is true:

13 (I) The defendant lacks capacity to make decisions regarding
14 antipsychotic medication, the defendant's mental disorder requires
15 medical treatment with antipsychotic medication, and, if the
16 defendant's mental disorder is not treated with antipsychotic
17 medication, it is probable that serious harm to the physical or
18 mental health of the patient will result. Probability of serious harm
19 to the physical or mental health of the defendant requires evidence
20 that the defendant is presently suffering adverse effects to his or
21 her physical or mental health, or the defendant has previously
22 suffered these effects as a result of a mental disorder and his or
23 her condition is substantially deteriorating. The fact that a
24 defendant has a diagnosis of a mental disorder does not alone
25 establish probability of serious harm to the physical or mental
26 health of the defendant.

27 (II) The defendant is a danger to others, in that the defendant
28 has inflicted, attempted to inflict, or made a serious threat of
29 inflicting substantial physical harm on another while in custody,
30 or the defendant had inflicted, attempted to inflict, or made a
31 serious threat of inflicting substantial physical harm on another
32 that resulted in his or her being taken into custody, and the
33 defendant presents, as a result of mental disorder or mental defect,
34 a demonstrated danger of inflicting substantial physical harm on
35 others. Demonstrated danger may be based on an assessment of
36 the defendant's present mental condition, including a consideration
37 of past behavior of the defendant within six years prior to the time
38 the defendant last attempted to inflict, inflicted, or threatened to
39 inflict substantial physical harm on another, and other relevant
40 evidence.

1 (III) The people have charged the defendant with a serious crime
2 against the person or property, involuntary administration of
3 antipsychotic medication is substantially likely to render the
4 defendant competent to stand trial, the medication is unlikely to
5 have side effects that interfere with the defendant's ability to
6 understand the nature of the criminal proceedings or to assist
7 counsel in the conduct of a defense in a reasonable manner, less
8 intrusive treatments are unlikely to have substantially the same
9 results, and antipsychotic medication is in the patient's best medical
10 interest in light of his or her medical condition.

11 (ii) If the court finds any of the conditions described in clause
12 (i) to be true, the court shall issue an order authorizing the treatment
13 facility to involuntarily administer antipsychotic medication to the
14 defendant when and as prescribed by the defendant's treating
15 psychiatrist. The court shall not order involuntary administration
16 of psychotropic medication under subclause (III) of clause (i)
17 unless the court has first found that the defendant does not meet
18 the criteria for involuntary administration of psychotropic
19 medication under subclause (I) of clause (i) and does not meet the
20 criteria under subclause (II) of clause (i).

21 (iii) In all cases, the treating hospital, facility, or program may
22 administer medically appropriate antipsychotic medication
23 prescribed by a psychiatrist in an emergency as described in
24 subdivision (m) of Section 5008 of the Welfare and Institutions
25 Code.

26 (iv) If the court has determined that the defendant has the
27 capacity to make decisions regarding antipsychotic medication,
28 and if the defendant, with advice of his or her counsel, consents,
29 the court order of commitment shall include confirmation that
30 antipsychotic medication may be given to the defendant as
31 prescribed by a treating psychiatrist pursuant to the defendant's
32 consent. The commitment order shall also indicate that, if the
33 defendant withdraws consent for antipsychotic medication, after
34 the treating psychiatrist complies with the provisions of
35 subparagraph (C), the defendant shall be returned to court for a
36 hearing in accordance with subparagraphs (C) and (D) regarding
37 whether antipsychotic medication shall be administered
38 involuntarily.

39 (v) If the court has determined that the defendant has the
40 capacity to make decisions regarding antipsychotic medication

1 and if the defendant, with advice from his or her counsel, does not
2 consent, the court order for commitment shall indicate that, after
3 the treating psychiatrist complies with the provisions of
4 subparagraph (C), the defendant shall be returned to court for a
5 hearing in accordance with subparagraphs (C) and (D) regarding
6 whether antipsychotic medication shall be administered
7 involuntarily.

8 (vi) Any report made pursuant to paragraph (1) of subdivision
9 (b) shall include a description of any antipsychotic medication
10 administered to the defendant and its effects and side effects,
11 including effects on the defendant's appearance or behavior that
12 would affect the defendant's ability to understand the nature of
13 the criminal proceedings or to assist counsel in the conduct of a
14 defense in a reasonable manner. During the time the defendant is
15 confined in a state hospital or other treatment facility or placed on
16 outpatient status, either the defendant or the people may request
17 that the court review any order made pursuant to this subdivision.
18 The defendant, to the same extent enjoyed by other patients in the
19 state hospital or other treatment facility, shall have the right to
20 contact the patients' rights advocate regarding his or her rights
21 under this section.

22 (C) If the defendant consented to antipsychotic medication as
23 described in clause (iv) of subparagraph (B), but subsequently
24 withdraws his or her consent, or, if involuntary antipsychotic
25 medication was not ordered pursuant to clause (v) of subparagraph
26 (B), and the treating psychiatrist determines that antipsychotic
27 medication has become medically necessary and appropriate, the
28 treating psychiatrist shall make efforts to obtain informed consent
29 from the defendant for antipsychotic medication. If informed
30 consent is not obtained from the defendant, and the treating
31 psychiatrist is of the opinion that the defendant lacks capacity to
32 make decisions regarding antipsychotic medication based on the
33 conditions described in subclause (I) or (II) of clause (i) of
34 subparagraph (B), the treating psychiatrist shall certify whether
35 the lack of capacity and any applicable conditions described above
36 exist. That certification shall contain an assessment of the current
37 mental status of the defendant and the opinion of the treating
38 psychiatrist that involuntary antipsychotic medication has become
39 medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To being given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order

1 to administer antipsychotic medication beyond the 21-day
2 certification period. For purposes of this subparagraph, the treating
3 psychiatrist shall not be required to pay or deposit any fee for the
4 filing of the petition or other document or paper related to the
5 petition.

6 (iii) If the administrative law judge disagrees with the
7 certification, medication may not be administered involuntarily
8 until the court determines that antipsychotic medication should be
9 administered pursuant to this section.

10 (iv) The court shall provide notice to the prosecuting attorney
11 and to the attorney representing the defendant, and shall hold a
12 hearing, no later than 18 days from the date of the certification, to
13 determine whether antipsychotic medication should be ordered
14 beyond the certification period.

15 (v) If, as a result of the hearing, the court determines that
16 antipsychotic medication should be administered beyond the
17 certification period, the court shall issue an order authorizing the
18 administration of that medication.

19 (vi) The court shall render its decision on the petition and issue
20 its order no later than three calendar days after the hearing and, in
21 any event, no later than the expiration of the 21-day certification
22 period.

23 (3) When the court orders that the defendant be confined in a
24 state hospital or other public or private treatment facility, the court
25 shall provide copies of the following documents which shall be
26 taken with the defendant to the state hospital or other treatment
27 facility where the defendant is to be confined:

28 (A) The commitment order, including a specification of the
29 charges.

30 (B) A computation or statement setting forth the maximum term
31 of commitment in accordance with subdivision (c).

32 (C) A computation or statement setting forth the amount of
33 credit for time served, if any, to be deducted from the maximum
34 term of commitment.

35 (D) State summary criminal history information.

36 (E) Any arrest reports prepared by the police department or
37 other law enforcement agency.

38 (F) Any court-ordered psychiatric examination or evaluation
39 reports.

1 (G) The community program director's placement
2 recommendation report.

3 (H) Records of any finding of mental incompetence pursuant
4 to this chapter arising out of a complaint charging a felony offense
5 specified in Section 290 or any pending Section 1368 proceeding
6 arising out of a charge of a Section 290 offense.

7 (4) When the defendant is committed to a treatment facility
8 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
9 court makes the findings specified in clause (ii) or (iii) of
10 subparagraph (B) of paragraph (1) to assign the defendant to a
11 treatment facility other than a state hospital or other secure
12 treatment facility, the court shall order that notice be given to the
13 appropriate law enforcement agency or agencies having local
14 jurisdiction at the site of the placement facility of any finding of
15 mental incompetence pursuant to this chapter arising out of a
16 charge of a Section 290 offense.

17 (5) When directing that the defendant be confined in a state
18 hospital pursuant to this subdivision, the court shall select the
19 hospital in accordance with the policies established by the State
20 Department of State Hospitals.

21 (6) (A) If the defendant is committed or transferred to a state
22 hospital pursuant to this section, the court may, upon receiving the
23 written recommendation of the medical director of the state hospital
24 and the community program director that the defendant be
25 transferred to a public or private treatment facility approved by
26 the community program director, order the defendant transferred
27 to that facility. If the defendant is committed or transferred to a
28 public or private treatment facility approved by the community
29 program director, the court may, upon receiving the written
30 recommendation of the community program director, transfer the
31 defendant to a state hospital or to another public or private
32 treatment facility approved by the community program director.
33 In the event of dismissal of the criminal charges before the
34 defendant recovers competence, the person shall be subject to the
35 applicable provisions of the Lanterman-Petris-Short Act (Part 1
36 commencing with Section 5000) of Division 5 of the Welfare and
37 Institutions Code). Where either the defendant or the prosecutor
38 chooses to contest either kind of order of transfer, a petition may
39 be filed in the court for a hearing, which shall be held if the court
40 determines that sufficient grounds exist. At the hearing, the

1 prosecuting attorney or the defendant may present evidence bearing
2 on the order of transfer. The court shall use the same standards as
3 are used in conducting probation revocation hearings pursuant to
4 Section 1203.2.

5 Prior to making an order for transfer under this section, the court
6 shall notify the defendant, the attorney of record for the defendant,
7 the prosecuting attorney, and the community program director or
8 a designee.

9 (B) If the defendant is initially committed to a state hospital or
10 secure treatment facility pursuant to clause (ii) or (iii) of
11 subparagraph (B) of paragraph (1) and is subsequently transferred
12 to any other facility, copies of the documents specified in paragraph
13 (3) shall be taken with the defendant to each subsequent facility
14 to which the defendant is transferred. The transferring facility shall
15 also notify the appropriate law enforcement agency or agencies
16 having local jurisdiction at the site of the new facility that the
17 defendant is a person subject to clause (ii) or (iii) of subparagraph
18 (B) of paragraph (1).

19 (7) An order by the court authorizing involuntary medication
20 of the defendant shall be valid for no more than one year. The
21 court shall review the order six months after the order was made
22 to determine if the grounds for the authorization remain. In the
23 review, the court shall consider the reports of the treating
24 psychiatrist or psychiatrists and the defendant's patients' rights
25 advocate or attorney. The court may require testimony from the
26 treating psychiatrist or psychiatrists and the patients' rights
27 advocate or attorney, if necessary. The court may continue the
28 order authorizing involuntary medication for up to another six
29 months, or vacate the order, or make any other appropriate order.

30 (b) (1) Within 90 days of ~~admission~~, *a commitment made*
31 *pursuant to subdivision (a)*, the medical director of the state
32 hospital or other treatment facility to which the defendant is
33 confined shall make a written report to the court and the community
34 program director for the county or region of commitment, or a
35 designee, concerning the defendant's progress toward recovery of
36 mental competence. Where the defendant is on outpatient status,
37 the outpatient treatment staff shall make a written report to the
38 community program director concerning the defendant's progress
39 toward recovery of mental competence. Within 90 days of
40 placement on outpatient status, the community program director

1 shall report to the court on this matter. If the defendant has not
2 recovered mental competence, but the report discloses a substantial
3 likelihood that the defendant will regain mental competence in the
4 foreseeable future, the defendant shall remain in the state hospital
5 or other treatment facility or on outpatient status. Thereafter, at
6 six-month intervals or until the defendant becomes mentally
7 competent, where the defendant is confined in a treatment facility,
8 the medical director of the hospital or person in charge of the
9 facility shall report in writing to the court and the community
10 program director or a designee regarding the defendant's progress
11 toward recovery of mental competence. Where the defendant is
12 on outpatient status, after the initial 90-day report, the outpatient
13 treatment staff shall report to the community program director on
14 the defendant's progress toward recovery, and the community
15 program director shall report to the court on this matter at
16 six-month intervals. A copy of these reports shall be provided to
17 the prosecutor and defense counsel by the court.

18 (A) If the report indicates that there is no substantial likelihood
19 that the defendant will regain mental competence in the foreseeable
20 future, the committing court shall order the defendant to be returned
21 to the court for proceedings pursuant to paragraph (2) of
22 subdivision (c) no later than 10 days following receipt of the report.
23 The court shall transmit a copy of its order to the community
24 program director or a designee.

25 (B) If the report indicates that there is no substantial likelihood
26 that the defendant will regain mental competence in the foreseeable
27 future, the medical director of the state hospital or other treatment
28 facility to which the defendant is confined shall do both of the
29 following:

30 (i) Promptly notify and provide a copy of the report to the
31 defense counsel and the district attorney.

32 (ii) Provide a separate notification, in compliance with
33 applicable privacy laws, to the committing county's sheriff that
34 transportation will be needed for the patient.

35 (2) Where the court has issued an order authorizing the treating
36 facility to involuntarily administer antipsychotic medication to the
37 defendant, the reports made at six-month intervals concerning the
38 defendant's progress toward regaining competency shall also
39 consider the issue of involuntary medication. Each report shall
40 include, but is not limited to, all the following:

1 (A) Whether or not the defendant has the capacity to make
2 decisions concerning antipsychotic medication.

3 (B) If the defendant lacks capacity to make decisions concerning
4 antipsychotic medication, whether the defendant risks serious harm
5 to his or her physical or mental health if not treated with
6 antipsychotic medication.

7 (C) Whether or not the defendant presents a danger to others if
8 he or she is not treated with antipsychotic medication.

9 (D) Whether the defendant has a mental illness for which
10 medications are the only effective treatment.

11 (E) Whether there are any side effects from the medication
12 currently being experienced by the defendant that would interfere
13 with the defendant's ability to collaborate with counsel.

14 (F) Whether there are any effective alternatives to medication.

15 (G) How quickly the medication is likely to bring the defendant
16 to competency.

17 (H) Whether the treatment plan includes methods other than
18 medication to restore the defendant to competency.

19 (I) A statement, if applicable, that no medication is likely to
20 restore the defendant to competency.

21 (3) After reviewing the reports, the court shall determine whether
22 or not grounds for the order authorizing involuntary administration
23 of antipsychotic medication still exist and shall do one of the
24 following:

25 (A) If the original grounds for involuntary medication still exist,
26 the order authorizing the treating facility to involuntarily administer
27 antipsychotic medication to the defendant shall remain in effect.

28 (B) If the original grounds for involuntary medication no longer
29 exist, and there is no other basis for involuntary administration of
30 antipsychotic medication, the order for the involuntary
31 administration of antipsychotic medication shall be vacated.

32 (C) If the original grounds for involuntary medication no longer
33 exist, and the report states that there is another basis for involuntary
34 administration of antipsychotic medication, the court shall set a
35 hearing within 21 days to determine whether the order for the
36 involuntary administration of antipsychotic medication shall be
37 vacated or whether a new order for the involuntary administration
38 of antipsychotic medication shall be issued. The hearing shall
39 proceed as set forth in subparagraph (B) of paragraph (2) of
40 subdivision (a).

1 (4) Any defendant who has been committed or has been on
2 outpatient status for 18 months and is still hospitalized or on
3 outpatient status shall be returned to the committing court where
4 a hearing shall be held pursuant to the procedures set forth in
5 Section 1369. The court shall transmit a copy of its order to the
6 community program director or a designee.

7 (5) If it is determined by the court that no treatment for the
8 defendant's mental impairment is being conducted, the defendant
9 shall be returned to the committing court. The court shall transmit
10 a copy of its order to the community program director or a
11 designee.

12 (6) At each review by the court specified in this subdivision,
13 the court shall determine if the security level of housing and
14 treatment is appropriate and may make an order in accordance
15 with its determination. If the court determines that the defendant
16 shall continue to be treated in the state hospital or on an outpatient
17 basis, the court shall determine issues concerning administration
18 of antipsychotic medication, as set forth in subparagraph (B) of
19 paragraph (2) of subdivision (a).

20 (c) (1) At the end of three years from the date of commitment
21 or a period of commitment equal to the maximum term of
22 imprisonment provided by law for the most serious offense charged
23 in the information, indictment, or misdemeanor complaint,
24 whichever is shorter, but no later than 90 days prior to the
25 expiration of the defendant's term of commitment, a defendant
26 who has not recovered mental competence shall be returned to the
27 committing court. The court shall notify the community program
28 director or a designee of the return and of any resulting court
29 orders.

30 (2) Whenever any defendant is returned to the court pursuant
31 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
32 subdivision and it appears to the court that the defendant is gravely
33 disabled, as defined in subparagraph (B) of paragraph (1) of
34 subdivision (h) of Section 5008 of the Welfare and Institutions
35 Code, the court shall order the conservatorship investigator of the
36 county of commitment of the defendant to initiate conservatorship
37 proceedings for the defendant pursuant to Chapter 3 (commencing
38 with Section 5350) of Part 1 of Division 5 of the Welfare and
39 Institutions Code. Any hearings required in the conservatorship
40 proceedings shall be held in the superior court in the county that

1 ordered the commitment. The court shall transmit a copy of the
2 order directing initiation of conservatorship proceedings to the
3 community program director or a designee, the sheriff and the
4 district attorney of the county in which criminal charges are
5 pending, and the defendant's counsel of record. The court shall
6 notify the community program director or a designee, the sheriff
7 and district attorney of the county in which criminal charges are
8 pending, and the defendant's counsel of record of the outcome of
9 the conservatorship proceedings.

10 (3) If a change in placement is proposed for a defendant who
11 is committed pursuant to subparagraph (B) of paragraph (1) of
12 subdivision (h) of Section 5008 of the Welfare and Institutions
13 Code, the court shall provide notice and an opportunity to be heard
14 with respect to the proposed placement of the defendant to the
15 sheriff and the district attorney of the county in which criminal
16 charges are pending.

17 (4) Where the defendant is confined in a treatment facility, a
18 copy of any report to the committing court regarding the
19 defendant's progress toward recovery of mental competence shall
20 be provided by the committing court to the prosecutor and to the
21 defense counsel.

22 (d) The criminal action remains subject to dismissal pursuant
23 to Section 1385. If the criminal action is dismissed, the court shall
24 transmit a copy of the order of dismissal to the community program
25 director or a designee.

26 (e) If the criminal charge against the defendant is dismissed,
27 the defendant shall be released from any commitment ordered
28 under this section, but without prejudice to the initiation of any
29 proceedings that may be appropriate under the
30 Lanterman-Petris-Short Act, Part 1 (commencing with Section
31 5000) of Division 5 of the Welfare and Institutions Code.

32 (f) As used in this chapter, "community program director" means
33 the person, agency, or entity designated by the State Department
34 of State Hospitals pursuant to Section 1605 of this code and Section
35 4360 of the Welfare and Institutions Code.

36 (g) For the purpose of this section, "secure treatment facility"
37 shall not include, except for state mental hospitals, state
38 developmental centers, and correctional treatment facilities, any
39 facility licensed pursuant to Chapter 2 (commencing with Section
40 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter

1 3.2 (commencing with Section 1569) of, Division 2 of the Health
2 and Safety Code, or any community board and care facility.

3 (h) Nothing in this section shall preclude a defendant from filing
4 a petition for habeas corpus to challenge the continuing validity
5 of an order authorizing a treatment facility or outpatient program
6 to involuntarily administer antipsychotic medication to a person
7 being treated as incompetent to stand trial.

8 SEC. 2. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.